

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Board of Patent Appeals and Interferences

Atty Dkt. 3830-13

C# M#

TC/A.U.: 3618

Examiner: J. Shriver, II

Date: June 9, 2005

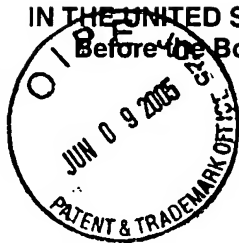
In re Patent Application of

ALLEN et al.

Serial No. 10/751,432

Filed: January 6, 2004

Title: SHUTTLE CAR WITH FIXED HEIGHT DISCHARGE BOOM (AS AMENDED)



AF

**Mail Stop Appeal Brief - Patents**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

☐ Correspondence Address Indication Form Attached.

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting applicant's claim(s).

\$500.00 (1401)/\$250.00 (2401) \$

☐ An appeal **BRIEF** is attached in the pending appeal of the above-identified application

\$500.00 (1402)/\$250.00 (2402) \$

☐ Credit for fees paid in prior appeal without decision on merits

-\$ ( )

☒ A reply brief is attached.

(no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)

One Month Extension \$120.00 (1251)/\$60.00 (2251)

Two Month Extensions \$450.00 (1252)/\$225.00 (2252)

Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)

Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$

☐ "Small entity" statement attached.

Less month extension previously paid on

-\$ ( )

**TOTAL FEE ENCLOSED \$ 0.00**

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYE P.C.  
By Atty: Alan M. Kagen, Reg. No. 36,178

Signature: Alan M. Kagen



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**REPLY BRIEF**

In reply to the Examiner's Answer dated April 14, 2005, Appellants herein submit this Reply Brief under 37 C.F.R. §1.193(b)(1).

In paragraph (11) of the Examiner's Answer, the Examiner maintains that since the Beck patent does not disclose that the discharge end of the conveyor is height adjustable, Beck therefore has a substantially fixed height. As discussed in the Appeal Brief, this "leap of faith" is in direct contrast with U.S. patent law. In the Examiner's Answer, the Examiner purports to support the conclusion by contending that the shaft of the conveyor in the Beck patent "has a supporting pin 61 on its end," which pin 61 is held in an aperture 62 of the gear casing 59. This characterization of the Beck structure, however, is inaccurate. The pin 61 in fact supports the gear casing via the aperture 62.

This pin 61 is not part of the “shaft of the conveyor” as asserted in the Examiner’s Answer. Appellants maintain that the Beck patent is without sufficient detail to determine whether the conveyor 20 is in fact height adjustable. Indeed, Beck describes that the upper flight of the conveyor is supported by the cross plate 30, and the lower reach of the conveyor is supported on intumed flanges 31 mounted along the lower edge of the side plates 12. Beck describes that the cross plate 30 is made integral with the upwardly extending wall portions 15 of the sidewalls 12. Beck does not disclose, however, whether the sidewalls 12 or other structure may be movable to effect height adjustment of the conveyor 20.

With regard to the Appellants’ arguments concerning the rejection over U.S. Patent No. 4,576,107 to Brasher, the Examiner questions how adjustability can be precluded when the claims define a “substantially fixed height.” By the Examiner’s arguments, it is not clear whether the Examiner’s concern relates to use of the word “substantially.” As discussed in the Appeal Brief, and as would be apparent to those of ordinary skill in the art, the discharge end may be subject to slight deflection via external forces, vehicle movement, etc., and the use of “substantially” is intended to avoid a strict interpretation of “fixed” as “entirely immovable.” As also discussed previously, since this would be abundantly clear to those of ordinary skill in the art and would thus be implied in the claim regardless of its presence, if necessary, the term “substantially” may be deleted.

The recitation of the Brasher patent, however, suggests that the use of the term “substantially” is not the extent of the Examiner’s concern. Clearly, the Brasher patent discloses an adjustable-height discharge end. The Examiner argues that since the discharge end can be set in one position or another, the Brasher patent anticipates the “substantially fixed height” structure of the claimed invention (“[a]fter the operator sets the height of the discharge end of the conveyor, it has a substantially fixed height”). Using the Examiner’s logic, it would seem that any vehicle where the conveyor height is not constantly varying would meet this feature of the invention. The Examiner argues that Appellants are reading limitations into the claims that are not there. Appellants respectfully submit, however, that the Examiner in fact is incorporating some sort of structure that fixes the conveyor at one height or another into the claims. This subject matter is not described in the specification nor intended in the claims.

The term “fixed” is defined in Webster’s Collegiate Dictionary, 11<sup>th</sup> Edition, as “immobile,” which definition is consistent with the description of the invention in the specification. Certainly, the Brasher patent height adjustability does not render the conveyor height “immobile” as is intended according to the present invention.

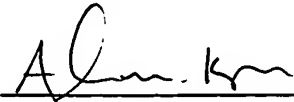
For the reasons discussed herein and in the Appeal Brief, Appellants submit that the application is in condition for allowance. Prompt reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

ALLEN et al.

Serial No. 10/751,432

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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